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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,279	04/11/2006	Antonius G. P. Oomens	010.2039	9544

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EXAMINER

BLUMEL, BENJAMIN P

ART UNIT	PAPER NUMBER
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1648

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,279	<b>Applicant(s)</b> OOMENS ET AL.	
	<b>Examiner</b> Benjamin P. Blumel	<b>Art Unit</b> 1648	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 56-105 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 56-105 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 56-71, 73-76, 79, 82-89 and 102-105, drawn to a recombinant virus.

Group II, claim(s) 72, drawn to a use of a recombinant virus.

Group III, claim(s) 80, drawn to non-human mammal.

Group IV, claim(s) 77, drawn to a method of detecting a molecule or an antibody in a biological sample.

Group V, claim(s) 78 and 81, drawn to a therapeutic vector.

Group VI, claim(s) 90-101, drawn to a mammalian cell.

The inventions listed as Groups I-VI do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the claims are directed to a recombinant virus expressing an envelope protein of baculovirus, a non-human mammal and methods involving the recombinant virus. However, because (Wertz et al. WO 03/029416) is drawn to a recombinant Respiratory Syncytial Virus (RSV) that expresses either the amino acids 563-574 of RSV F protein fused with a baculovirus GP64 protein or the GP64 protein separately. The heterologous protein enables the virus to enter into mammalian cells. Furthermore, group III does not have a

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technical feature because there is no technical information in the respective claim. Lastly, no special technical feature exists for groups I-VI as defined by PCT Rule 13.2, because it does not define a contribution over the prior art. Note that PCT Rule 13 does not provide for multiple products or methods within a single application. Because the technical feature of Groups I-VI is not a special technical feature, unity of invention is lacking.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

No matter which invention is elected, applicants must also elect **one specific species** (unless stated otherwise) from each grouping below.

- A. A specific non-paramyxoviral envelope protein composition as stated in claim 58.
- B. A specific storage temperature and duration as stated in claims 61-69, 82-84, 86 and 102-105.
- C. A specific percentage of viral infectivity reduction as stated in claims 65-67, 82 and 86.
- D. A specific number of encoded immunogenic epitopes as stated in claims 70 and 73.
- E. A specific heterologous domain as stated in claims 76, 94 and 96.
- F. At least one specific endogenous protein as stated in claim 93.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An

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argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

- A. Claim 58 requires a specific non-paramyxoviral envelope protein composition, all other claims are generic.
- B. Claims 61-69, 82-84, 86 and 102-105 require a specific storage temperature and duration, all other claims are generic
- C. Claims 65-67, 82 and 86 require a specific percentage of viral infectivity reduction, all other claims are generic.
- D. Claims 70 and 73 require a specific number of encoded immunogenic epitopes, all other claims are generic.
- E. Claims 76, 94 and 96 require a specific heterologous domain, all other claims are generic.
- F. Claim 93 requires a specific endogenous protein, all other claims are generic.

The following claim(s) are generic: all claims are generic because no claim is limited to a defined recombinant RSV.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: each envelope protein, storage condition, infectivity reduction, immunogenic epitopes, heterologous domains and endogenous protein are distinct species because each species is chemically, physically and functionally distinct.

### ***Summary***

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin P. Blumel whose telephone number is 571-272-4960. The examiner can normally be reached on M-F, 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-1600. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Benjamin Blumel  
Patent Examiner



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